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5 UNITED STATES BANKRUPTCY COURT
6 NORTHERN DISTRICT OF CALIFORNIA

7 IN RE: CASE No. 17-10828 WJL

8 FLOYD E. SQUIRES, III and CHAPTER 11
9 BETTY J. SQUIRES,

10 Debtors. / MEMORANDUM OF AUTHORITIES IN
SUPPORT OF EX PARTE MOTION TO
APPOINT SPECIAL COUNSEL

11 Date: February 1, 2018

12 Time: 11:00 a.m.

13 Place: U.S. Courthouse
3140 Boeing Avenue
McKinleyville, CA

14 FLOYD E. SQUIRES, III and BETTY J. SQUIRES, Debtors herein,
15 submit the following Memorandum in Support of their Ex Parte Motion
16 to appoint Bradford Floyd as special counsel:

17 1. Debtors have submitted by Ex Parte Motion, their request
18 to employ Bradford Floyd as special counsel in the case pursuant to
19 11 U.S.C. §327(e). The Motion is supported by an Amended
20 Declaration of Bradford Floyd disclosing that (a) Mr. Floyd holds
21 a security interest in real properties of the estate adverse to the
22 estate, and (b) Mr. Floyd holds unsecured claims against the
23 estate.

24 2. Bradford Floyd is a licensed attorney licensed to
25 practice in the State of California and the Northern District of
26 California with primary offices in Eureka, California. Mr. Floyd's
27 practice is focused upon real property and land use litigation.

1 His representation of the Debtors with regard to land use issues in
2 the City of Eureka dates back to January, 2011. The matter pending
3 before the Superior Court, County of Humboldt, Case No. DR 110040
4 has involved six months of litigation concerning a preliminary
5 injunction, six weeks of trial, motions, oppositions, and
6 attendance at all Court matters, including Receiver Reports since
7 the interim rulings. Mr. Floyd is familiar with the remaining
8 three properties which have not been signed off by the City of
9 Eureka.

10 3. It is acknowledged that Mr. Floyd is not disinterested
11 pursuant to §327(a) inasmuch as he holds an interest in Deed of
12 Trust on the following parcels:

- 13 a. 1429 Sunny Ave., Eureka, CA; and
- 14 b. 2535 L St., Eureka, CA.

15 4. The duly appointed Receiver has cleared all but the
16 following three parcels of property per the Receiver:

- 17 a. 833 H Street, Eureka, CA;
- 18 b. 219 5th St., Eureka; and
- 19 c. 315 C Street, Eureka

20 5. It is further acknowledged that Mr. Floyd holds an
21 unsecured claim against the estate.

22 6. The Trustee, with the Court's approval, may employ for a
23 specified special purpose, an attorney that has represented the
24 Debtor if in the best interests of the estate and, if the attorney
25 does not hold or represent any interest adverse to the Debtors or
26 to the estate with respect to the matter in which the attorney is
27 to be engaged. 11 U.S.C. §327(e).

1 7. In order to be disinterested, an attorney must not hold
2 a claim against the estate as of the commencement of the case [11
3 U.S.C. §101(14)(A)] or an interest materially adverse to the estate
4 [11 U.S.C. §101(14)(C)].

5 8. Mr. Floyd's unsecured claim is not adverse to the estate
6 or the Debtors with respect to the land use matters in which he is
7 to be engaged. The estate's ability to repay claims allowed
8 against it is directly dependent upon the value of the various
9 properties which value, in part, is not determined by, but impacted
10 by permissible use thereof. The unsecured claim is not adverse to
11 such determinations and is only indirectly related.

12 9. Mr. Floyd's security interests in property of the estate
13 are not related to the land use matters for which Mr. Floyd's
14 employment is sought. Other than being impacted by the permissible
15 use of the subject properties, the properties in which Mr. Floyd
16 has an interest have been cleared by the Receiver as being in
17 compliance prior to the commencement of the case. Again, Mr.
18 Floyd's interest is not related, except indirectly, to the land use
19 issues which are presented. The attorney to qualify as special
20 counsel must not hold an adverse interest relating to the services
21 to be performed. In re Fondmiller, 15 B.R. 890 (9th Cir. BAP 1981).
22 Unlike general counsel, special counsel for the Debtor need not be
23 wholly disinterested. Such counsel must not hold any interest
24 adverse to debtor or estate only with respect to matters on which
25 counsel is to be employed. In re Imperial Corp. of America, 181
26 B.R. 501 (Bkctcy. S.D. Calif. 1995).

27 10. Each parcel of property of the estate was affirmatively
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1 determined by the Superior Court not to be in violation of
2 California Health and Safety Code prior to commencement of the case
3 and as of the date of the Interim Order.

4 11. The Objecting parties contend that an *actual conflict* of
5 interests exists between the proposed representation of Mr. Floyd
6 and the estate:

7 a. Mr. Floyd holds a claim against the estate;

8 b. Mr. Floyd is the beneficiary of Deed of Trust
9 describing property of the estate; and

10 c. Potential avoidable transfers to or for the benefit
11 of Mr. Floyd.

12 12. The ABA Model Rules provide:

13 Rule 1.7 CONFLICT OF INTEREST: Current Clients.

14 (a) Except as provided in paragraph (b), a
15 lawyer shall not represent a client if the
16 representation involves a concurrent conflict of
17 interest. A concurrent conflict of interest exists
18 if:

16 (2) there is a significant risk that the
17 representation of one or more clients will be
18 materially limited by the personal interest of the
19 lawyer.

19 13. The notes to Rule 1.7 provide that even where there is no
20 direct adverseness, a conflict of interests exists if there is a
21 significant risk that a lawyer's ability to consider, recommend, or
22 carry out an appropriate course of action for the client will be
23 materially limited as a result of the lawyer's other interests.

24 14. In this instance, (1) no facts have been presented by the
25 objecting parties or allegations made that there is a *substantial*
26 risk that Mr. Floyd will not be able to consider, recommend, or
27 carry out an appropriate course of action within the matters for

1 which he is sought to be retained, and (2) deference to general
2 counsel in any matters in which Mr. Floyd's claim or adverse
3 interests are relevant is acknowledged.

4 15. The objecting parties' opposition is disingenuous and an
5 effort to deprive the Debtors of experienced, capable and local
6 counsel who has previously represented the Debtors with respect to
7 the same matter. The arguments advanced by opposing parties fail
8 to establish a factual basis for establishing a concurrent conflict
9 of interest with respect to the matters for which Mr. Floyd is
10 sought to be engaged or disinterestedness with respect to such
11 matters.

12 WHEREFORE, Debtors respectfully submit that the Objections of
13 both the City of Eureka and the California Receiver Group be
14 overruled and that Debtors be authorized to retain Bradford Floyd
15 as special counsel pursuant to 11 U.S.C. §327(e) to represent the
16 Debtor and the estate with respect to the land use issues and the
17 pending Superior Court litigation and for such other and further
18 relief as the Court deems proper.

19 Dated: January 29, 2018

DAVID N. CHANDLER, p.c.

21 By: /s/David N. Chandler

22 David N. Chandler

23 Attorneys for Debtor
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